Supreme Court, U.S.
FILED
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05-567

No. _____

In the
Supreme Court of the United States

DEBBIE MEDLEY,

Petitioner,

v.

LYNN MEERS, as Guardian for Leslie Meers,
JOEY ROGERS,

Respondents.

On Petition for a Writ of Certiorari to the Kentucky Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Are public school students with disabilities who make claims cognizable under the Individuals with Disabilities Education Act at liberty to circumvent the exhaustion requirement under the Act by making additional claims of "physical abuse" and invoking statutes or laws other than the Individuals with Disabilities Education Act?

RULE 14.1(b)STATEMENT

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Petitioner: Debbie Medley[1]

Respondents: Lynn Meers, as Guardian for Leslie Meers, and Joey Rogers

RULE 29.6 STATEMENT

Petitioner has no parent corporation, and no publicly held company owns 10% or more of its stock.

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[1] Other parties were Defendants in the trial court; however, those parties have not joined the Petitioner in this matter.

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PETITION FOR WRIT OF CERTIORARI

The Petitioner, Debbie Medley (hereinafter "Medley"), respectfully petitions this Court for a writ of certiorari to review an order of the Supreme Court of Kentucky, which denied Medley's motion for discretionary review of the opinion of the Kentucky Court of Appeals, Case No. 2004-CA-001003-MR, entered on October 29, 2004. The Court of Appeals' opinion (which consolidated, for purposes of appeal, the separate complaints filed by the Respondents herein) reversed Shelby Circuit Court's order which had granted a motion to dismiss that was made by the petitioner against the respondents' several claims. The opinion of the Court of Appeals differs from opinions rendered in other federal and state courts concerning interpretation of the applicability of the exhaustion requirement of the Individuals with Disabilities Education Act.

OPINIONS BELOW

An unreported order of Shelby Circuit Court, entered on April 25, 2003 [Pet. App. at 14a-16a], granted the petitioner's motion to dismiss the respondents' claims. That order was appealed to the Kentucky Court of Appeals, and on October 29, 2004, the Kentucky Court of Appeals rendered its opinion [Pet. App. at 4a], reversing the circuit court's order. [Pet. App. at 11a]. That Kentucky Court of Appeals' opinion has been officially reported at 168 S.W.3d 406 (Ky. App. 2004). A petition for rehearing was timely submitted to the Court of Appeals and that petition was denied in an unreported order rendered on December 22, 2004. [Pet. App. at 2a]. The Supreme Court of Kentucky denied petitioner's motion for discretionary review in an unreported order dated August 17, 2005. [Pet. App. at 1a].

JURISDICTION

The certiorari jurisdiction of this Court is invoked in conformity with 28 U.S.C. 1254(1). The Kentucky Court of Appeals rendered its opinion on October 29, 2004, and subsequently denied Medley's petition for rehearing on December 22, 2004. Petitioner timely filed a Motion for Discretionary Review with the Supreme Court of Kentucky and it denied that motion on August 17, 2005. This Petition was then timely filed.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

The relevant provisions of the Individuals with Disabilities Education Act (hereinafter, "IDEA"), as amended, are set forth below:

1415. Procedural safeguards

(i) Administrative procedures

(2) Right to bring civil action

(A) In general

> Any party aggrieved by the findings and decision made under subsection (f) or (k) of this section who does not have the right to an appeal under subsection (g) of this section, and any party aggrieved by the findings and decision made under this subsection, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States, without regard to the amount in controversy.

(l) Rule of construction

> Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990 [42 U.S.C. §12101 et seq.], Title V of the Rehabilitation Act of 1973 [29 U.S.C. § 791 *et seq.*], or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the procedures under subsections (f) and (g) of this section **shall be exhausted** to the same extent as would be required had the action been brought under this subchapter. [Emphasis added.]

STATEMENT

Respondents, Lynn Meers and Joey Rogers, brought separate civil actions against Petitioner, Debbie Medley.

Lynn Meers, as guardian for Leslie Meers

Respondent, Lynn Meers, is the guardian of Leslie Meers (hereinafter, "Meers"), who was a special education student at Shelby County High School during the 2000-2001 school year. Leslie Meers suffers from autism.

Meers alleged in her complaint that the petitioner, Debbie Medley, berated, harassed, embarrassed, physically abused, and mentally abused, Leslie Meers. Further, Meers also alleged that the classroom setting was not a suitable environment for her child who was deprived of appropriate guidance and instructions with respect to her education. However, Meers made no complaint, and requested no due

process hearing, which was available to her pursuant to requirements found in the Individuals with Disabilities Education Act (hereinafter, "IDEA"), concerning these allegations, prior to filing the complaint in Shelby Circuit Court.

Leslie Meers had an individualized educational program (hereinafter "IEP"). Lynn Meers, as her guardian, was made aware of the due process rights that were available to her if she wanted to make a complaint about the free appropriate public education that Leslie was entitled to receive as a special education student eligible for related services.

Joey Rogers

Respondent, Joey Rogers (hereinafter, "Rogers"), was a special education student at Shelby County High School. He suffers from cerebral palsy.

Rogers alleged in his complaint that Medley berated, harassed, embarrassed, physically abused, and mentally abused him. Rogers also alleged that there was an unstable classroom environment, and that he was deprived of appropriate guidance and instructions with respect to his education. While Rogers contends that he complained to Debbie Medley, Jim Flynn, and to others, he did fail to pursue relief, or to exhaust the administrative remedies available to him, to address these allegations.

Rogers made no complaint, and requested no due process hearing, which was available to him pursuant to requirements found in the IDEA, concerning these allegations, prior to filing the complaint in Shelby Circuit Court.

Rogers had an IEP. Rogers and his parents were made aware of the due process rights that were available to him if he wanted to make a complaint about the free appropriate public education that he was entitled to receive as a special education student eligible for related services.

REASONS FOR GRANTING THE PETITION

1. THE MEERS & ROGERS OPINION BY THE KENTUCKY COURT OF APPEALS SUBSTANTIALLY MISCONCEIVED THE APPLICABILITY OF THE EXHAUSTION REQUIREMENT THAT IS CODIFIED IN THE IDEA.

The opinion at issue began its analysis by summarily stating that "[t]here are no claims asserted in the complaints under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400-1491) (West 2003 & Supp. 2004)." However, the court plainly ignored the acknowledgment made by respondents, in their complaint, that the alleged acts have educational consequences. The complaints of Meers and Rogers alleged, in relevant part:

- Negligence with respect to the monitoring and supervision "[i]n failing to monitor and in failing to provide supervision in instructional services to Medley while [Meers and Rogers were] in her class."

- That Meers and Rogers were aggrieved because they were "required to be in [Medley's] classroom."